



February 24, 2006

ENGROSSED HOUSE BILL No. 1414

DIGEST OF HB 1414 (Updated February 22, 2006 6:13 pm - DI 106)

Citations Affected: IC 5-2; IC 12-13; IC 31-9; IC 35-32; IC 35-37; IC 35-41; IC 35-42; IC 35-45; IC 35-50; noncode.

Synopsis: Human and sexual trafficking. Makes it promotion of human trafficking, a Class B felony, for a person to recruit, harbor, or transport another person to: (1) engage the other person in forced labor or involuntary servitude; or (2) force the other person into marriage or prostitution. Makes it sexual trafficking of a minor, a Class A felony, for certain individuals to sell or transfer custody of a child less than 18 years of age for the purpose of prostitution. Makes it human trafficking, a Class C felony, for a person to pay for an individual whom the person knows has been forced into forced labor, involuntary servitude, marriage, or prostitution. Requires a court to order a person convicted of a human and sexual trafficking offense to pay restitution to the victim of the offense. Establishes a civil cause of action for victims of human and sexual trafficking offenses. Requires law enforcement officers and the division of family resources to provide certain assistance to victims of human and sexual trafficking offenses. Adds human and sexual trafficking crimes to the list of crimes that: (1)
(Continued next page)

Effective: July 1, 2006.

Austin, Ruppel, Lawson L, Ulmer

(SENATE SPONSORS — DELPH, LONG, LANANE, SIMPSON, ZAKAS,
KRUSE, STEELE)

January 12, 2006, read first time and referred to Committee on Courts and Criminal Code.
January 26, 2006, amended, reported — Do Pass.
January 30, 2006, read second time, ordered engrossed. Engrossed.
February 2, 2006, read third time, passed. Yeas 97, nays 0.

SENATE ACTION

February 7, 2006, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
February 23, 2006, amended, reported favorably — Do Pass.

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invoke certain procedures for evidence concerning protected persons; (2) can be a crime of domestic violence; (3) can be murder if a person is killed during the commission of the crime; and (4) can be a "racketeering activity". Requires the sentencing policy study committee to study issues related to human trafficking. Requires the law enforcement training board to establish minimum standards for a course of study on human and sexual trafficking that must be required for each person accepted for training at a law enforcement training school or academy and for inservice training programs for law enforcement officers.

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February 24, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1414

A BILL FOR AN ACT to amend the Indiana Code concerning human and sexual trafficking.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-2-1-9, AS AMENDED BY P.L.2-2005,
2 SECTION 12, P.L.52-2005, SECTION 6, P.L.170-2005, SECTION 8,
3 AND P.L.227-2005, SECTION 2, IS CORRECTED AND AMENDED
4 TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 9. (a)
5 The board shall adopt in accordance with IC 4-22-2 all necessary rules
6 to carry out the provisions of this chapter. ~~Such~~ The rules, which shall
7 be adopted only after necessary and proper investigation and inquiry by
8 the board, shall include the establishment of the following:
9 (1) Minimum standards of physical, educational, mental, and
10 moral fitness which shall govern the acceptance of any person for
11 training by any law enforcement training school or academy
12 meeting or exceeding the minimum standards established
13 pursuant to this chapter.
14 (2) Minimum standards for law enforcement training schools
15 administered by towns, cities, counties, ~~the northwest Indiana~~ law

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enforcement training ~~center~~, centers, agencies, or departments of the state.

(3) Minimum standards for courses of study, attendance requirements, equipment, and facilities for approved town, city, county, and state law enforcement officer, police reserve officer, and conservation reserve officer training schools.

(4) Minimum standards for a course of study on cultural diversity awareness that must be required for each person accepted for training at a law enforcement training school or academy.

(5) Minimum qualifications for instructors at approved law enforcement training schools.

(6) Minimum basic training requirements which law enforcement officers appointed to probationary terms shall complete before being eligible for continued or permanent employment.

(7) Minimum basic training requirements which law enforcement officers *not appointed for probationary terms but* appointed on other than a permanent basis shall complete in order to be eligible for continued employment or permanent appointment.

(8) Minimum basic training requirements which law enforcement officers appointed on a permanent basis shall complete in order to be eligible for continued employment.

(9) Minimum basic training requirements for each person accepted for training at a law enforcement training school or academy that include six (6) hours of training in interacting with persons with mental illness, addictive disorders, mental retardation, and developmental disabilities, to be provided by persons approved by the secretary of family and social services and the ~~law enforcement training~~ board.

(10) Minimum standards for a course of study on human and sexual trafficking that must be required for each person accepted for training at a law enforcement training school or academy and for inservice training programs for law enforcement officers. The course must cover the following topics:

(A) Examination of the human and sexual trafficking laws (IC 35-42-3.5).

(B) Identification of human and sexual trafficking.

(C) Communicating with traumatized persons.

(D) Therapeutically appropriate investigative techniques.

(E) Collaboration with federal law enforcement officials.

(F) Rights of and protections afforded to victims.

(G) Providing documentation that satisfies the Declaration

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1 of Law Enforcement Officer for Victim of Trafficking in
 2 Persons (Form I-914, Supplement B) requirements
 3 established under federal law.

4 (H) The availability of community resources to assist
 5 human and sexual trafficking victims.

6 (b) Except as provided in subsection (l), a law enforcement officer
 7 appointed after July 5, 1972, and before July 1, 1993, may not enforce
 8 the laws or ordinances of the state or any political subdivision unless
 9 the officer has, within one (1) year from the date of appointment,
 10 successfully completed the minimum basic training requirements
 11 established under this chapter by the board. If a person fails to
 12 successfully complete the basic training requirements within one (1)
 13 year from the date of employment, the officer may not perform any of
 14 the duties of a law enforcement officer involving control or direction
 15 of members of the public or exercising the power of arrest until the
 16 officer has successfully completed the training requirements. This
 17 subsection does not apply to any law enforcement officer appointed
 18 before July 6, 1972, or after June 30, 1993.

19 (c) Military leave or other authorized leave of absence from law
 20 enforcement duty during the first year of employment after July 6,
 21 1972, shall toll the running of the first year, which ~~in such cases~~ shall
 22 be calculated by the aggregate of the time before and after the leave, for
 23 the purposes of this chapter.

24 (d) Except as provided in subsections (e), ~~and~~ (l), and ~~(n)~~, (q), a law
 25 enforcement officer appointed to a law enforcement department or
 26 agency after June 30, 1993, may not:

- 27 (1) make an arrest;
- 28 (2) conduct a search or a seizure of a person or property; or
- 29 (3) carry a firearm;

30 unless the law enforcement officer successfully completes, at a board
 31 certified law enforcement academy ~~at the southwest Indiana law~~
 32 ~~enforcement training academy under section 10.5 of this chapter,~~ or at
 33 ~~the northwest Indiana a~~ law enforcement training center under section
 34 10.5 or 15.2 of this chapter, the basic training requirements established
 35 by the board under this chapter.

36 (e) *This subsection does not apply to a gaming agent employed as*
 37 *a law enforcement officer by the Indiana gaming commission.* Before
 38 a law enforcement officer appointed after June 30, 1993, completes the
 39 basic training requirements, the law enforcement officer may exercise
 40 the police powers described in subsection (d) if the officer successfully
 41 completes the pre-basic course established in subsection (f). Successful
 42 completion of the pre-basic course authorizes a law enforcement officer

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to exercise the police powers described in subsection (d) for one (1) year after the date the law enforcement officer is appointed.

(f) The board shall adopt rules under IC 4-22-2 to establish a pre-basic course for the purpose of training:

(1) law enforcement officers;

(2) police reserve officers (as described in IC 36-8-3-20); and

(3) conservation reserve officers (as described in IC 14-9-8-27); regarding the subjects of arrest, search and seizure, *the lawful use of force, and firearm qualification: the operation of an emergency vehicle.* The pre-basic course must be offered on a periodic basis throughout the year at regional sites statewide. The pre-basic course must consist of *at least* forty (40) hours of course work. The board may prepare *a the classroom part of the* pre-basic course *on videotape that must be used using available technology* in conjunction with live instruction. The board shall provide the course material, the instructors, and the facilities at the regional sites throughout the state that are used for the pre-basic course. In addition, the board may certify pre-basic courses that may be conducted by other public or private training entities, including colleges and universities.

(g) The board shall adopt rules under IC 4-22-2 to establish a mandatory inservice training program for police officers. After June 30, 1993, a law enforcement officer who has satisfactorily completed *the* basic training and has been appointed to a law enforcement department or agency on either a full-time or part-time basis is not eligible for continued employment unless the officer satisfactorily completes *a minimum of sixteen (16) hours each year of inservice training in any subject area included in the law enforcement academy's basic training course or other job related subjects that are approved by the board as determined by the law enforcement department's or agency's needs: the mandatory inservice training requirements established by rules adopted by the board.* Inservice training must include training in interacting with persons with mental illness, addictive disorders, mental retardation, and developmental disabilities, to be provided by persons approved by the secretary of family and social services and the *law enforcement training board, in addition, a certified academy staff may develop and make available inservice training programs on a regional or local basis: and training concerning human and sexual trafficking.* The board may approve courses offered by other public or private training entities, including colleges and universities, as necessary in order to ensure the availability of an adequate number of inservice training programs. The board may waive an officer's inservice training requirements if the board determines that the officer's reason

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for lacking the required amount of inservice training hours is due to ~~any~~ either of the following:

- (1) An emergency situation.
- (2) The unavailability of courses.

(h) The board shall also adopt rules establishing a town marshal basic training program, subject to the following:

(1) The program must require fewer hours of instruction and class attendance and fewer courses of study than are required for the mandated basic training program.

(2) Certain parts of the course materials may be studied by a candidate at the candidate's home in order to fulfill requirements of the program.

(3) Law enforcement officers successfully completing the requirements of the program are eligible for appointment only in towns employing the town marshal system (IC 36-5-7) and having ~~no~~ not more than one (1) marshal and two (2) deputies.

(4) The limitation imposed by subdivision (3) does not apply to an officer who has successfully completed the mandated basic training program.

(5) The time limitations imposed by subsections (b) and (c) for completing the training are also applicable to the town marshal basic training program.

(i) The board shall adopt rules under IC 4-22-2 to establish ~~a police chief~~ an executive training program. The *executive training* program must include training in the following areas:

- (1) Liability.
- (2) Media relations.
- (3) Accounting and administration.
- (4) Discipline.
- (5) Department policy making.
- ~~(6) Firearm policies.~~
- ~~(6) Lawful use of force.~~
- (7) Department programs.
- ~~(8) Emergency vehicle operation.~~
- ~~(9) Cultural diversity.~~

(j) A police chief shall apply for admission to the ~~police chief~~ executive training program within two (2) months of the date the police chief initially takes office. A police chief must successfully complete the ~~police chief~~ executive training program within six (6) months of the date the police chief initially takes office. However, if space in the *executive training* program is not available at a time that will allow ~~the police chief to complete~~ completion of the *executive training* program

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1 within six (6) months of the date the police chief initially takes office,
 2 the police chief must successfully complete the next available *executive*
 3 *training* program that is offered ~~to the police chief~~ after the police chief
 4 initially takes office.

5 (k) A police chief who fails to comply with subsection (j) may not
 6 *continue to* serve as the police chief until ~~the police chief has~~
 7 ~~completed the police chief completion of the~~ executive training
 8 program. For the purposes of this subsection and subsection (j), "police
 9 chief" refers to:

10 (1) the police chief of any city; ~~and~~

11 (2) the police chief of any town having a metropolitan police
 12 department; *and*

13 (3) *the chief of a consolidated law enforcement department*
 14 *established under IC 36-3-1-5.1.*

15 A town marshal is not considered to be a police chief for these
 16 purposes, but a town marshal may enroll in the ~~police chief~~ executive
 17 training program.

18 (l) ~~An A fire~~ investigator in the ~~arson division of the office of the~~
 19 ~~state fire marshal division of fire and building safety~~ appointed

20 ~~(1) before January 1, 1994, is not required; or~~

21 ~~(2) after December 31, 1993, is required~~

22 to comply with the basic training standards established under this
 23 ~~section. chapter.~~

24 (m) The board shall adopt rules under IC 4-22-2 to establish a
 25 program to certify handgun safety courses, including courses offered
 26 in the private sector, that meet standards approved by the board for
 27 training probation officers in handgun safety as required by
 28 IC 11-13-1-3.5(3).

29 (n) *The board shall adopt rules under IC 4-22-2 to establish a*
 30 *refresher course for an officer who:*

31 (1) *is hired by an Indiana law enforcement department or agency*
 32 *as a law enforcement officer;*

33 (2) *worked as a full-time law enforcement officer for at least one*
 34 *(1) year before the officer is hired under subdivision (1);*

35 (3) *has not been employed as a law enforcement officer for at*
 36 *least two (2) years and less than six (6) years before the officer is*
 37 *hired under subdivision (1) due to the officer's resignation or*
 38 *retirement; and*

39 (4) *completed a basic training course certified by the board*
 40 *before the officer is hired under subdivision (1).*

41 (o) *An officer to whom subsection (n) applies must successfully*
 42 *complete the refresher course described in subsection (n) not later*

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than six (6) months after the officer's date of hire, or the officer loses the officer's powers of:

- (1) arrest;
- (2) search; and
- (3) seizure.

(p) A law enforcement officer who:

(1) has completed a basic training course certified by the board; and
 (2) has not been employed as a law enforcement officer in the six (6) years before the officer is hired as a law enforcement officer; is not eligible to attend the refresher course described in subsection (n) and must repeat the full basic training course to regain law enforcement powers.

~~(n)~~ (q) This subsection applies only to a gaming agent employed as a law enforcement officer by the Indiana gaming commission. A gaming agent appointed after June 30, 2005, may exercise the police powers described in subsection (d) if:

- (1) the agent successfully completes the pre-basic course established in subsection (f); and
- (2) the agent successfully completes any other training courses established by the Indiana gaming commission in conjunction with the board.

SECTION 2. IC 12-13-5-2, AS AMENDED BY P.L.234-2005, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. The division shall administer the following:

- (1) Any sexual offense services.
- (2) A child development associate scholarship program.
- (3) Any school age dependent care program.
- (4) Migrant day care services.
- (5) Prevention services to high risk youth.
- (6) Any commodities program.
- (7) The migrant nutrition program.
- (8) Any emergency shelter programs.
- (9) Any weatherization programs.
- (10) The Housing Assistance Act of 1937 (42 U.S.C. 1437).
- (11) The home visitation and social services program.
- (12) The educational consultants program.
- (13) Community restitution or service programs.
- (14) The crisis nursery program.
- (15) Energy assistance programs.
- (16) Domestic violence programs.
- (17) Social services programs.

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(18) Assistance to migrants and seasonal farmworkers.

(19) The step ahead comprehensive early childhood grant program.

(20) Assistance to victims of human and sexual trafficking offenses as provided in IC 35-42-3.5-4, as appropriate.

~~(20)~~ **(21)** Any other program:

(A) designated by the general assembly; or

(B) administered by the federal government under grants consistent with the duties of the division.

SECTION 3. IC 31-9-2-29.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 29.5. "Crime involving domestic or family violence" means a crime that occurs when a family or household member commits, attempts to commit, or conspires to commit any of the following against another family or household member:

(1) A homicide offense under IC 35-42-1.

(2) A battery offense under IC 35-42-2.

(3) Kidnapping or confinement under IC 35-42-3.

(4) A sex offense under IC 35-42-4.

(5) Robbery under IC 35-42-5.

(6) Arson or mischief under IC 35-43-1.

(7) Burglary or trespass under IC 35-43-2.

(8) Disorderly conduct under IC 35-45-1.

(9) Intimidation or harassment under IC 35-45-2.

(10) Voyeurism under IC 35-45-4.

(11) Stalking under IC 35-45-10.

(12) An offense against the family under IC 35-46-1-2 through IC 35-46-1-8, IC 35-46-1-12, or IC 35-46-1-15.1.

(13) Human and sexual trafficking crimes under IC 35-42-3.5.

SECTION 4. IC 35-32-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) A person who commits the offense of:

(1) kidnapping; or

(2) criminal confinement;

(3) human trafficking;

(4) promotion of human trafficking; or

(5) sexual trafficking of a minor;

may be tried in a county in which the victim has traveled or has been confined during the course of the offense.

(b) A person who commits the offense of criminal confinement or interference with custody may be tried in a county in which the child who was removed, taken, concealed, or detained in violation of a child

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custody order:

- (1) was a legal resident at the time of the taking, concealment, or detention;
- (2) was taken, detained, or concealed; or
- (3) was found.

SECTION 5. IC 35-37-4-6, AS AMENDED BY P.L.2-2005, SECTION 120, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. (a) This section applies to a criminal action involving the following offenses where the victim is a protected person under subsection (c)(1) or (c)(2):

- (1) Sex crimes (IC 35-42-4).
- (2) Battery upon a child (IC 35-42-2-1(a)(2)(B)).
- (3) Kidnapping and confinement (IC 35-42-3).
- (4) Incest (IC 35-46-1-3).
- (5) Neglect of a dependent (IC 35-46-1-4).
- (6) Human and sexual trafficking crimes (IC 35-42-3.5).**
- ~~(6)~~ (7) An attempt under IC 35-41-5-1 for an offense listed in subdivisions (1) through ~~(5)~~: **(6)**.

(b) This section applies to a criminal action involving the following offenses where the victim is a protected person under subsection (c)(3):

- (1) Exploitation of a dependent or endangered adult (IC 35-46-1-12).
- (2) A sex crime (IC 35-42-4).
- (3) Battery (IC 35-42-2-1).
- (4) Kidnapping, confinement, or interference with custody (IC 35-42-3).
- (5) Home improvement fraud (IC 35-43-6).
- (6) Fraud (IC 35-43-5).
- (7) Identity deception (IC 35-43-5-3.5).
- (8) Theft (IC 35-43-4-2).
- (9) Conversion (IC 35-43-4-3).
- (10) Neglect of a dependent (IC 35-46-1-4).

(11) Human and sexual trafficking crimes (IC 35-42-3.5).

(c) As used in this section, "protected person" means:

- (1) a child who is less than fourteen (14) years of age;
- (2) a mentally disabled individual who has a disability attributable to an impairment of general intellectual functioning or adaptive behavior that:
 - (A) is manifested before the individual is eighteen (18) years of age;
 - (B) is likely to continue indefinitely;
 - (C) constitutes a substantial impairment of the individual's

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- ability to function normally in society; and
- (D) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated; or
- (3) an individual who is:
- (A) at least eighteen (18) years of age; and
- (B) incapable by reason of mental illness, mental retardation, dementia, or other physical or mental incapacity of:
- (i) managing or directing the management of the individual's property; or
- (ii) providing or directing the provision of self-care.
- (d) A statement or videotape that:
- (1) is made by a person who at the time of trial is a protected person;
- (2) concerns an act that is a material element of an offense listed in subsection (a) or (b) that was allegedly committed against the person; and
- (3) is not otherwise admissible in evidence;
- is admissible in evidence in a criminal action for an offense listed in subsection (a) or (b) if the requirements of subsection (e) are met.
- (e) A statement or videotape described in subsection (d) is admissible in evidence in a criminal action listed in subsection (a) or (b) if, after notice to the defendant of a hearing and of the defendant's right to be present, all of the following conditions are met:
- (1) The court finds, in a hearing:
- (A) conducted outside the presence of the jury; and
- (B) attended by the protected person;
- that the time, content, and circumstances of the statement or videotape provide sufficient indications of reliability.
- (2) The protected person:
- (A) testifies at the trial; or
- (B) is found by the court to be unavailable as a witness for one
- (1) of the following reasons:
- (i) From the testimony of a psychiatrist, physician, or psychologist, and other evidence, if any, the court finds that the protected person's testifying in the physical presence of the defendant will cause the protected person to suffer serious emotional distress such that the protected person cannot reasonably communicate.
- (ii) The protected person cannot participate in the trial for medical reasons.

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(iii) The court has determined that the protected person is incapable of understanding the nature and obligation of an oath.

(f) If a protected person is unavailable to testify at the trial for a reason listed in subsection (e)(2)(B), a statement or videotape may be admitted in evidence under this section only if the protected person was available for cross-examination:

- (1) at the hearing described in subsection (e)(1); or
- (2) when the statement or videotape was made.

(g) A statement or videotape may not be admitted in evidence under this section unless the prosecuting attorney informs the defendant and the defendant's attorney at least ten (10) days before the trial of:

- (1) the prosecuting attorney's intention to introduce the statement or videotape in evidence; and
- (2) the content of the statement or videotape.

(h) If a statement or videotape is admitted in evidence under this section, the court shall instruct the jury that it is for the jury to determine the weight and credit to be given the statement or videotape and that, in making that determination, the jury shall consider the following:

- (1) The mental and physical age of the person making the statement or videotape.
- (2) The nature of the statement or videotape.
- (3) The circumstances under which the statement or videotape was made.
- (4) Other relevant factors.

(i) If a statement or videotape described in subsection (d) is admitted into evidence under this section, a defendant may introduce a:

- (1) transcript; or
- (2) videotape;

of the hearing held under subsection (e)(1) into evidence at trial.

SECTION 6. IC 35-37-4-8, AS AMENDED BY P.L.2-2005, SECTION 121, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. (a) This section applies to a criminal action under the following:

- (1) Sex crimes (IC 35-42-4).
- (2) Battery upon a child (IC 35-42-2-1(a)(2)(B)).
- (3) Kidnapping and confinement (IC 35-42-3).
- (4) Incest (IC 35-46-1-3).
- (5) Neglect of a dependent (IC 35-46-1-4).
- (6) **Human and sexual trafficking crimes (IC 35-42-3.5).**

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~~(6)~~ (7) An attempt under IC 35-41-5-1 for an offense listed in subdivisions (1) through ~~(5)~~: (6).

(b) As used in this section, "protected person" has the meaning set forth in section 6 of this chapter.

(c) On the motion of the prosecuting attorney, the court may order that the testimony of a protected person be taken in a room other than the courtroom, and that the questioning of the protected person by the prosecution and the defense be transmitted using a two-way closed circuit television arrangement that:

(1) allows the protected person to see the accused and the trier of fact; and

(2) allows the accused and the trier of fact to see and hear the protected person.

(d) On the motion of the prosecuting attorney or the defendant, the court may order that the testimony of a protected person be videotaped for use at trial. The videotaping of the testimony of a protected person under this subsection must meet the requirements of subsection (c).

(e) The court may not make an order under subsection (c) or (d) unless:

(1) the testimony to be taken is the testimony of a protected person who:

(A) is the alleged victim of an offense listed in subsection (a) for which the defendant is being tried or is a witness in a trial for an offense listed in subsection (a); and

(B) is found by the court to be a protected person who should be permitted to testify outside the courtroom because:

(i) the court finds from the testimony of a psychiatrist, physician, or psychologist and any other evidence that the protected person's testifying in the physical presence of the defendant would cause the protected person to suffer serious emotional harm and the court finds that the protected person could not reasonably communicate in the physical presence of the defendant to the trier of fact;

(ii) a physician has certified that the protected person cannot be present in the courtroom for medical reasons; or

(iii) evidence has been introduced concerning the effect of the protected person's testifying in the physical presence of the defendant, and the court finds that it is more likely than not that the protected person's testifying in the physical presence of the defendant creates a substantial likelihood of emotional or mental harm to the protected person;

(2) the prosecuting attorney has informed the defendant and the

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defendant's attorney of the intention to have the protected person testify outside the courtroom; and

(3) the prosecuting attorney informed the defendant and the defendant's attorney under subdivision (2) at least ten (10) days before the trial of the prosecuting attorney's intention to have the protected person testify outside the courtroom.

(f) If the court makes an order under subsection (c), only the following persons may be in the same room as the protected person during the protected person's testimony:

(1) A defense attorney if:

(A) the defendant is represented by the defense attorney; and

(B) the prosecuting attorney is also in the same room.

(2) The prosecuting attorney if:

(A) the defendant is represented by a defense attorney; and

(B) the defense attorney is also in the same room.

(3) Persons necessary to operate the closed circuit television equipment.

(4) Persons whose presence the court finds will contribute to the protected person's well-being.

(5) A court bailiff or court representative.

(g) If the court makes an order under subsection (d), only the following persons may be in the same room as the protected person during the protected person's videotaped testimony:

(1) The judge.

(2) The prosecuting attorney.

(3) The defendant's attorney (or the defendant, if the defendant is not represented by an attorney).

(4) Persons necessary to operate the electronic equipment.

(5) The court reporter.

(6) Persons whose presence the court finds will contribute to the protected person's well-being.

(7) The defendant, who can observe and hear the testimony of the protected person with the protected person being able to observe or hear the defendant. However, if the defendant is not represented by an attorney, the defendant may question the protected person.

(h) If the court makes an order under subsection (c) or (d), only the following persons may question the protected person:

(1) The prosecuting attorney.

(2) The defendant's attorney (or the defendant, if the defendant is not represented by an attorney).

(3) The judge.

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SECTION 7. IC 35-41-1-6.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6.5. "Crime involving domestic or family violence" means a crime that occurs when a family or household member commits, attempts to commit, or conspires to commit any of the following against another family or household member:

- (1) A homicide offense under IC 35-42-1.
- (2) A battery offense under IC 35-42-2.
- (3) Kidnapping or confinement under IC 35-42-3.
- (4) Human and sexual trafficking crimes under IC 35-42-3.5.**
- ~~(4)~~ **(5)** A sex offense under IC 35-42-4.
- ~~(5)~~ **(6)** Robbery under IC 35-42-5.
- ~~(6)~~ **(7)** Arson or mischief under IC 35-43-1.
- ~~(7)~~ **(8)** Burglary or trespass under IC 35-43-2.
- ~~(8)~~ **(9)** Disorderly conduct under IC 35-45-1.
- ~~(9)~~ **(10)** Intimidation or harassment under IC 35-45-2.
- ~~(10)~~ **(11)** Voyeurism under IC 35-45-4.
- ~~(11)~~ **(12)** Stalking under IC 35-45-10.
- ~~(12)~~ **(13)** An offense against family under IC 35-46-1-2 through IC 35-46-1-8, IC 35-46-1-12, or IC 35-46-1-15.1.

SECTION 8. IC 35-42-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. A person who:

- (1) knowingly or intentionally kills another human being;
- (2) kills another human being while committing or attempting to commit arson, burglary, child molesting, consumer product tampering, criminal deviate conduct, kidnapping, rape, robbery, **human trafficking, promotion of human trafficking, sexual trafficking of a minor**, or carjacking;
- (3) kills another human being while committing or attempting to commit:

- (A) dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1);
- (B) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);
- (C) dealing in a schedule IV controlled substance (IC 35-48-4-3); or
- (D) dealing in a schedule V controlled substance; or
- (4) knowingly or intentionally kills a fetus that has attained viability (as defined in IC 16-18-2-365);

commits murder, a felony.

SECTION 9. IC 35-42-3.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2006]:

Chapter 3.5. Human and Sexual Trafficking

Sec. 1. (a) A person who knowingly or intentionally recruits, harbors, or transports another person by force, threat of force, or fraud:

(1) to engage the other person in:

(A) forced labor; or

(B) involuntary servitude; or

(2) to force the other person into:

(A) marriage; or

(B) prostitution;

commits promotion of human trafficking, a Class B felony.

(b) A parent, guardian, or custodian of a child less than eighteen (18) years of age who knowingly or intentionally sells or transfers custody of the child for the purpose of prostitution commits sexual trafficking of a minor, a Class A felony.

(c) A person who knowingly or intentionally pays, offers to pay, or agrees to pay money or other property to another person for an individual who the person knows has been forced into:

(1) forced labor;

(2) involuntary servitude;

(3) marriage; or

(4) prostitution;

commits human trafficking, a Class C felony.

Sec. 2. In addition to any sentence or fine imposed for a conviction of an offense under section 1 of this chapter, the court shall order the person convicted to make restitution to the victim of the crime under IC 35-50-5-3.

Sec. 3. (a) If a person is convicted of an offense under section 1 of this chapter, the victim of the offense:

(1) has a civil cause of action against the person convicted of the offense; and

(2) may recover the following from the person in the civil action:

(A) Actual damages.

(B) Court costs.

(C) Punitive damages, when determined to be appropriate by the court.

(D) Reasonable attorney's fees.

(b) An action under this section must be brought not more than two (2) years after the date the person is convicted of the offense under section 1 of this chapter.

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1 **Sec. 4. (a) An alleged victim of an offense under section 1 of this**
 2 **chapter:**

3 (1) shall be housed in an appropriate shelter as soon as
 4 possible;

5 (2) may not be detained in a facility that is inappropriate to
 6 the victim's status as a crime victim;

7 (3) may not be jailed, fined, or otherwise penalized due to
 8 having been the victim of the offense;

9 (4) shall receive prompt medical care, mental health care,
 10 food, and other appropriate assistance;

11 (5) shall have access to legal assistance, information about the
 12 victim's rights, and translation services, if necessary; and

13 (6) shall be provided protection if the victim's safety is at risk
 14 or if there is danger of additional harm by recapture of the
 15 victim by the person who allegedly committed the offense,
 16 including:

17 (A) taking measures to protect the alleged victim and the
 18 victim's family members from intimidation and threats of
 19 reprisals and reprisals from the person who allegedly
 20 committed the offense or the person's agent; and

21 (B) ensuring that the names and identifying information of
 22 the alleged victim and the victim's family members are not
 23 disclosed to the public.

24 This subsection shall be administered by law enforcement agencies
 25 and the division of family resources, as appropriate.

26 (b) Not more than fifteen (15) days after the date a law
 27 enforcement agency first encounters an alleged victim of an offense
 28 under section 1 of this chapter, the law enforcement agency shall
 29 provide the alleged victim with a completed Declaration of Law
 30 Enforcement Officer for Victim of Trafficking in Persons (LEA
 31 Declaration, Form I-914 Supplement B) in accordance with 8 CFR
 32 214.11(f)(1). However, if the law enforcement agency finds that the
 33 grant of an LEA Declaration is not appropriate for the alleged
 34 victim, the law enforcement agency shall, not more than fifteen (15)
 35 days after the date the agency makes the finding, provide the
 36 alleged victim with a letter explaining the grounds for the denial of
 37 the LEA Declaration. After receiving a denial letter, the alleged
 38 victim may submit additional evidence to the law enforcement
 39 agency. If the alleged victim submits additional evidence, the law
 40 enforcement agency shall reconsider the denial of the LEA
 41 Declaration not more than seven (7) days after the date the agency
 42 receives the additional evidence.

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SECTION 10. IC 35-45-6-1 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. As used in this
chapter:

"Documentary material" means any document, drawing, photograph,
recording, or other tangible item containing compiled data from which
information can be either obtained or translated into a usable form.

"Enterprise" means:

(1) a sole proprietorship, corporation, limited liability company,
partnership, business trust, or governmental entity; or

(2) a union, an association, or a group, whether a legal entity or
merely associated in fact.

"Pattern of racketeering activity" means engaging in at least two (2)
incidents of racketeering activity that have the same or similar intent,
result, accomplice, victim, or method of commission, or that are
otherwise interrelated by distinguishing characteristics that are not
isolated incidents. However, the incidents are a pattern of racketeering
activity only if at least one (1) of the incidents occurred after August
31, 1980, and if the last of the incidents occurred within five (5) years
after a prior incident of racketeering activity.

"Racketeering activity" means to commit, to attempt to commit, to
conspire to commit a violation of, or aiding and abetting in a violation
of any of the following:

(1) A provision of IC 23-2-1, or of a rule or order issued under
IC 23-2-1.

(2) A violation of IC 35-45-9.

(3) A violation of IC 35-47.

(4) A violation of IC 35-49-3.

(5) Murder (IC 35-42-1-1).

(6) Battery as a Class C felony (IC 35-42-2-1).

(7) Kidnapping (IC 35-42-3-2).

(8) Human and sexual trafficking crimes (IC 35-42-3.5).

~~(8)~~ **(9)** Child exploitation (IC 35-42-4-4).

~~(9)~~ **(10)** Robbery (IC 35-42-5-1).

~~(10)~~ **(11)** Carjacking (IC 35-42-5-2).

~~(11)~~ **(12)** Arson (IC 35-43-1-1).

~~(12)~~ **(13)** Burglary (IC 35-43-2-1).

~~(13)~~ **(14)** Theft (IC 35-43-4-2).

~~(14)~~ **(15)** Receiving stolen property (IC 35-43-4-2).

~~(15)~~ **(16)** Forgery (IC 35-43-5-2).

~~(16)~~ **(17)** Fraud (IC 35-43-5-4(1) through IC 35-43-5-4(9)).

~~(17)~~ **(18)** Bribery (IC 35-44-1-1).

~~(18)~~ **(19)** Official misconduct (IC 35-44-1-2).

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- ~~(19)~~ **(20)** Conflict of interest (IC 35-44-1-3).
~~(20)~~ **(21)** Perjury (IC 35-44-2-1).
~~(21)~~ **(22)** Obstruction of justice (IC 35-44-3-4).
~~(22)~~ **(23)** Intimidation (IC 35-45-2-1).
~~(23)~~ **(24)** Promoting prostitution (IC 35-45-4-4).
~~(24)~~ **(25)** Promoting professional gambling (IC 35-45-5-4).
~~(25)~~ **(26)** Dealing in or manufacturing cocaine, a narcotic drug, or
methamphetamine (IC 35-48-4-1).
~~(26)~~ **(27)** Dealing in a schedule I, II, or III controlled substance
(IC 35-48-4-2).
~~(27)~~ **(28)** Dealing in a schedule IV controlled substance
(IC 35-48-4-3).
~~(28)~~ **(29)** Dealing in a schedule V controlled substance
(IC 35-48-4-4).
~~(29)~~ **(30)** Dealing in marijuana, hash oil, or hashish
(IC 35-48-4-10).
~~(30)~~ **(31)** Money laundering (IC 35-45-15-5).
~~(31)~~ **(32)** A violation of IC 35-47.5-5.

SECTION 11. IC 35-50-5-3, AS AMENDED BY P.L.2-2005,
SECTION 129, IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2006]: Sec. 3. (a) Except as provided in
subsection (i), in addition to any sentence imposed under this article for
a felony or misdemeanor, the court may, as a condition of probation or
without placing the person on probation, order the person to make
restitution to the victim of the crime, the victim's estate, or the family
of a victim who is deceased. The court shall base its restitution order
upon a consideration of:

- (1) property damages of the victim incurred as a result of the
crime, based on the actual cost of repair (or replacement if repair
is inappropriate);
 - (2) medical and hospital costs incurred by the victim (before the
date of sentencing) as a result of the crime;
 - (3) the cost of medical laboratory tests to determine if the crime
has caused the victim to contract a disease or other medical
condition;
 - (4) earnings lost by the victim (before the date of sentencing) as
a result of the crime including earnings lost while the victim was
hospitalized or participating in the investigation or trial of the
crime; and
 - (5) funeral, burial, or cremation costs incurred by the family or
estate of a homicide victim as a result of the crime.
- (b) A restitution order under subsection (a) or (i) is a judgment lien

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that:

- (1) attaches to the property of the person subject to the order;
- (2) may be perfected;
- (3) may be enforced to satisfy any payment that is delinquent under the restitution order by the person in whose favor the order is issued or the person's assignee; and
- (4) expires;

in the same manner as a judgment lien created in a civil proceeding.

(c) When a restitution order is issued under subsection (a), the issuing court may order the person to pay the restitution, or part of the restitution, directly to:

(1) the victim services division of the Indiana criminal justice institute in an amount not exceeding:

- (A) the amount of the award, if any, paid to the victim under IC 5-2-6.1; and
- (B) the cost of the reimbursements, if any, for emergency services provided to the victim under IC 16-10-1.5 (before its repeal) or IC 16-21-8; or

(2) a probation department that shall forward restitution or part of restitution to:

- (A) a victim of a crime;
- (B) a victim's estate; or
- (C) the family of a victim who is deceased.

The victim services division of the Indiana criminal justice institute shall deposit the restitution it receives under this subsection in the violent crime victims compensation fund established by IC 5-2-6.1-40.

(d) When a restitution order is issued under subsection (a) or (i), the issuing court shall send a certified copy of the order to the clerk of the circuit court in the county where the felony or misdemeanor charge was filed. The restitution order must include the following information:

- (1) The name and address of the person that is to receive the restitution.
- (2) The amount of restitution the person is to receive.

Upon receiving the order, the clerk shall enter and index the order in the circuit court judgment docket in the manner prescribed by IC 33-32-3-2. The clerk shall also notify the department of insurance of an order of restitution under subsection (i).

(e) An order of restitution under subsection (a) or (i) does not bar a civil action for:

- (1) damages that the court did not require the person to pay to the victim under the restitution order but arise from an injury or property damage that is the basis of restitution ordered by the

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1 court; and

2 (2) other damages suffered by the victim.

3 (f) Regardless of whether restitution is required under subsection (a)
4 as a condition of probation or other sentence, the restitution order is not
5 discharged by the completion of any probationary period or other
6 sentence imposed for a felony or misdemeanor.

7 (g) A restitution order under subsection (a) or (i) is not discharged
8 by the liquidation of a person's estate by a receiver under IC 32-30-5
9 (or IC 34-48-1, IC 34-48-4, IC 34-48-5, IC 34-48-6, IC 34-1-12, or
10 IC 34-2-7 before their repeal).

11 (h) The attorney general may pursue restitution ordered by the court
12 under subsections (a) and (c) on behalf of the victim services division
13 of the Indiana criminal justice institute established under IC 5-2-6-8.

14 (i) The court may order the person convicted of an offense under
15 IC 35-43-9 to make restitution to the victim of the crime. The court
16 shall base its restitution order upon a consideration of the amount of
17 money that the convicted person converted, misappropriated, or
18 received, or for which the convicted person conspired. The restitution
19 order issued for a violation of IC 35-43-9 must comply with
20 subsections (b), (d), (e), and (g), and is not discharged by the
21 completion of any probationary period or other sentence imposed for
22 a violation of IC 35-43-9.

23 **(j) The court shall order a person convicted of an offense under**
24 **IC 35-42-3.5 to make restitution to the victim of the crime in an**
25 **amount equal to the greater of the following:**

26 **(1) The gross income or value to the person of the victim's**
27 **labor or services.**

28 **(2) The value of the victim's labor as guaranteed under the**
29 **minimum wage and overtime provisions of:**

30 **(A) the federal Fair Labor Standards Act of 1938, as**
31 **amended (29 U.S.C. 201-209); or**

32 **(B) IC 22-2-2 (Minimum Wage);**

33 **whichever is greater.**

34 **SECTION 12. [EFFECTIVE JULY 1, 2006] (a) The sentencing**
35 **policy study committee shall study issues related to human and**
36 **sexual trafficking.**

37 **(b) This SECTION expires December 31, 2006.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1414, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 19, line 22, after "into" insert ":

(A) **marriage; or**

(B)".

Page 19, line 32, delete "or".

Page 19, line 33, after "(3)" insert "**marriage; or (4)**".

and when so amended that said bill do pass.

(Reference is to HB 1414 as introduced.)

ULMER, Chair

Committee Vote: yeas 8, nays 0.

SENATE MOTION

Madam President: I move that Senators Zakas and Kruse be added as cosponsors of Engrossed House Bill 1414.

DELPH

SENATE MOTION

Madam President: I move that Senator Steele be added as cosponsor of Engrossed House Bill 1414.

DELPH

COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred House Bill No. 1414, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as

EH 1414—LS 6959/DI 69+



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follows:

Page 1, delete lines 1 through 15.

Delete pages 2 through 4.

Page 5, delete lines 1 through 40.

Page 19, line 32, delete "is" and insert "**the person knows has been**".

Page 19, line 37, delete "Class B" and insert "**Class C**".

Page 25, after line 4, begin a new paragraph and insert:

"SECTION 13. [EFFECTIVE JULY 1, 2006] **(a) The sentencing policy study committee shall study issues related to human and sexual trafficking.**

(b) This SECTION expires December 31, 2006.".

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1414 as printed January 27, 2006.)

LONG, Chairperson

Committee Vote: Yeas 10, Nays 0.

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